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JAMES E. SPEED
Executive Director

November 30, 2001

Subject: County Assessment Appeals Board - Legality of Deposit for Hearings

Dear Mr. :

This is in reply to your request for an opinion sent by fax dated November 16, 2001 concerning the legality of the County local board rule which requires that an applicant submit a \$200 deposit at the time of the filing of an application for reduced assessment before a hearing is granted. As set forth below, there exists no express statutory authority for a hearing deposit and, in our opinion, no deposit may be required without such authority. In view of the fact that there are statutorily authorized fees for other services in connection with the appeals process, we conclude that the Legislature viewed fees and other charges as a matter of statewide concern and intended to circumscribe the counties' authority to act in this area. Furthermore, we interpret the rulemaking authority conferred on the counties by Section 16 of Article XIII of the California Constitution as limited to the adoption of rules of notice and procedures when they do not involve matters of statewide concern.

Law and Analysis

Revenue and Taxation Code section 1601 and following sections and Property Tax Rules 302 through 326, which interpret, clarify and implement those sections, provide the relevant statutory authority for the functioning of local appeals boards. Those statutes and rules set forth detailed rules of procedure for the conduct of assessment appeals proceedings.

Section 1605.6 provides in relevant part that: "After the filing of an application for reduction of an assessment, the clerk of the county board of equalization shall set the matter for hearing and notify the applicant, or his or her designated representative, of the time and date of the hearing." Once a hearing has been granted, section 1611 permits any party to request a transcript or recording of the hearing at that party's expense and section 1611.5 provides that a party who requests findings of fact shall bear the expense of preparing the findings. However, none of the sections pertaining to assessment appeals hearings require that an applicant pay a refundable deposit as a condition of being granted a hearing.

In view of the existing statutory scheme which specifically provides for some fees but not others, we infer that the Legislature has determined that monetary charges required as a condition of an assessment appeal are a matter of statewide concern requiring statewide uniformity. In this regard, state law by implication occupies this area of the assessment appeals process. If a local ordinance, such as the local rule in issue here, duplicates or enters an area fully occupied by state law, either expressly or by legislative implication, the local ordinance is in conflict and, therefore, void. *People ex rel. Deukmejian v. County of Mendocino* (1984) 36 Cal.3d 476, 484. As a result, state law effectively preempts the county's authority to require a deposit.

We find support for our conclusion that the Legislature has preempted by implication any county action in this area by an application of the tests for determining legislative intent. As a means of ascertaining legislative intent, the Supreme Court, in *In re Hubbard* (1964) 62 Cal.2d 119, 128, articulated three alternative tests for determining the limits of local authority. The court held that chartered counties and cities have full power to legislate in regard to municipal affairs unless:

(1) the subject matter has been so fully and completely covered by general law as to clearly indicate that it has become exclusively a matter of state concern; (2) the subject matter has been partially covered by general law couched in such terms as to indicate clearly that a paramount state concern will not tolerate further or additional local action; or (3) the subject matter has been partially covered by general law, and the subject is of such a nature that the adverse effect of a local ordinance on the transient citizens of the state outweighs the possible benefit to the municipality.

The stated legislative intent behind changes to the Revenue and Taxation Code provisions relating to assessment appeals and the expansive breadth and scope of the legislation implementing those changes satisfy the first test by demonstrating that "the subject matter has been so fully and completely covered by general law as to clearly indicate that it has become exclusively a matter of state concern." In 1966, in response to various assessment practices abuses throughout the state, the Legislature enacted AB 80 (Stats. 1966, Ch. 147), a comprehensive bill reforming many aspects of the assessment and equalization processes. The Assembly committee charged with examining the problem, the Municipal and County Government Committee, issued a report of its findings and recommendations in which it stated that such legislation was needed, in part, "to provide assessees with a more equitable procedure for protesting unfair assessments." Section 104 of Chapter 147, an uncoded note of intent, reflects the statewide policy impact of the legislation by providing that: "It is the intention of the Legislature by this act to provide reforms in assessment practices with respect to locally assessable tangible property and to achieve equity in the assessment and equalization of such property." Further, the Legislature has clearly indicated that the assessment appeals process is a matter of statewide concern by prescribing the administrative requirements, jurisdictional parameters, organizational makeup of appeals boards, and qualifications for board members and hearing officers.

Section 16 of Article XIII provides that a county's board of supervisors may promulgate rules for the conduct of appeals boards. In relevant part, that section provides:

County boards of supervisors shall fix the compensation for members of assessment appeals boards, furnish clerical and other assistance for those boards, adopt *rules of notice and procedures* for those boards as may be required to facilitate their work and to insure uniformity in the processing and decision of equalization petitions, and may provide for their discontinuance. (italics added)

In our view, section 16 contemplates such rules of notice and procedure as are necessary to facilitate the effective functioning of an appeals board in areas that are not a matter of statewide uniformity. As stated above, the statutory scheme governing the conduct of appeals boards evidences a legislative intent that the imposition of monetary charges is a matter requiring statewide uniformity. Therefore, the county has no authority to adopt supplementary or complementary local legislation because the area has been fully occupied by the state, even if the hearing deposit requirement could be properly characterized as a local board function. *In re Hubbard* (1964) 62 Cal.2d 119, 127.

The views expressed in this letter are only advisory in nature; they represent the analysis of the legal staff of the Board based on present law and the facts set forth herein, and are not binding on any person or public entity.

Very truly yours,

/s/ *Louis Ambrose*

Louis Ambrose
Senior Tax Counsel

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cc: Mr. David Gau, MIC:63
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